



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 111

**Assembly Amendments 2,
3 and 4**

Memo published: March 22, 2001

Contact: Nick Zavos (266-1308)

ASSEMBLY AMENDMENT 2

This amendment makes four changes.

First, the amendment specifically excludes the assignment of worker's compensation claims from the scope of the chapter.

Second, the bill currently provides a model financing statement and states that a filing office may not refuse to accept a properly filled-out model financing statement. The model form has a space for a Social Security number. This amendment provides that a filing office may not refuse to accept a model form because a Social Security number is not included.

Third, the amendment corrects the date of the act, changing it from "1999 Act . . ." to "2001 Act"

Fourth, the amendment provides the Department of Financial Institutions spending authority to administer the new chapter.

Passage of Assembly Amendment 2 was recommended by the Assembly Committee on Financial Institutions, Ayes, 15; Noes, 0; March 20, 2001.

ASSEMBLY AMENDMENT 3

This amendment is modeled after Appendix II of the model act. It creates a security interest called a production-money security agreement. A production money security interest allows the debtor to obtain new value in order to produce crops, and gives the creditor's security interest priority in those crops to the extent the value is used to produce the crops.

In order to gain this special status, however, the secured party must notify any party that holds a conflicting security interest before the transaction takes place. The notification must include the names and addresses of the lender who is providing the notice, the creditor who is being notified, and the debtor. It must also describe the crops, and list the date of the transaction and the maximum value to be provided.

Passage of Assembly Amendment 3 was recommended by the Assembly Committee on Financial Institutions, Ayes, 15; Noes, 0; March 20, 2001.

ASSEMBLY AMENDMENT 4

This amendment affects the treatment of security interests related to the purchase of consumer goods. It expands the bill's treatment of nonconsumer goods to consumer goods.

First, the amendment extends the "dual status" rule to consumer goods transactions. In general, credit for the purchase of a good can create a security interest called a purchase money security interest (PMSI). A PMSI generally gives the creditor priority over all other security interests in the purchase money collateral. The defining feature of a PMSI is a one-to-one relationship between the value given (i.e., the money) and the collateral purchased (i.e., the dishwasher, car, or stereo). Thus, if the debtor receives \$500 to buy a stereo, he or she must use that money to buy the stereo.

A problem arises when the value given and the collateral do not exactly match. For example, a bank gives the debtor \$500 to buy a stereo but takes a security interest both in the stereo and in the debtor's car. The security interest in the car is not a PMSI because the credit was not extended for its purchase. Now that a one-to-one relationship is not there, the question becomes what is the status of the security interest in the stereo?

Courts have taken two approaches to the issue. Some courts have applied the "transformation" doctrine and held that the creditor does not have a PMSI at all. The creditor's interest in both the car and the stereo has the status of any other security interest, and the creditor would not necessarily have first priority in any of the goods. Other courts have applied the "dual status" rule. The "dual status" rule separates the interest in the stereo from the interest in the car. The creditor retains the PMSI as to the stereo. As to the non-PMSI collateral (the car), the creditor would have a regular security interest.

The bill currently adopts the "dual status" rule for nonconsumer goods transactions and leaves to the courts the determination of how to treat consumer goods transactions. This amendment would extend the "dual status" rule to consumer goods transactions.

Second, the amendment also expands the bill's treatment of how payments are applied to the collateral in consumer goods transactions. In nonconsumer goods transactions, if the extent to which a security interest is a PMSI depends on how the debtor's payments are allocated, the bill provides a method of determining how to allocate the payments. The bill states that the payments will be applied in any reasonable manner that the parties agree to. If there is no agreement, the payment will be applied in accordance with the intention of the debtor at or before the time of payment. If there is no agreement and there is no manifestation of intent, the payments will be applied to any unsecured debts first. Then, if there is more than one obligation, the payments will be applied to PMSIs in the order in which they were created (i.e., first in, first out).

Like the issue of “dual status” versus transformation, the bill does not address how consumer transactions would be treated; it is left to the courts. The issue could arise, for example, when a consumer entered into a series of independent PMSIs. For example, assume a debtor bought from the same creditor a snowmobile and then a month later bought a boat. Each cost \$1,000, and each gave rise to a PMSI, but the debtor pays for both with only one monthly check. After the debtor has paid \$1,000, he defaults. A court would be free to find that the debtor had completely paid off the snowmobile and that the debtor owned it free of the security agreement. Alternatively, a court could find that the debtor had paid off half of the debt on each item, or that the debtor had paid off a larger portion of one item than the other. The amendment makes the method of allocation used in nonconsumer goods transactions applicable to consumer goods transactions.

Third, the amendment places the burden of establishing the extent of a PMSI on the creditor. This would arise, for example, if a debtor had a number of debts to the same creditor. If one of the debts was secured with a PMSI, but the debtor only made one payment per month, the question would arise as to whether those payments were allocated to the PMSI or to the other debts. The bill currently provides that in a nonconsumer goods transaction the creditor claiming a PMSI has the burden of establishing the extent to which the security agreement is a PMSI. The amendment extends this rule to consumer transactions as well.

Fourth, the amendment eliminates the filing fee for filing termination statements.

Fifth, under the bill, a person can be liable for damages caused by his or her failure to comply with the code. In addition to these damages, the bill also allows one to recover a \$500 fine for certain violations of the code such as failing to file a termination statement and failing to respond for a request for an accounting. This amendment eliminates these statutorily prescribed damages.

Passage of Assembly Amendment 4 was recommended by the Assembly Committee on Financial Institutions, Ayes, 8; Noes, 7; March 20, 2001.

Passage of Assembly Bill 111, as amended, was recommended by the Assembly Committee on Financial Institutions, Ayes, 14; Noes, 1; March 20, 2001.

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